No. 533.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

MOTION TO ADVANCE CAUSE ON DOCKET.

The appellants come now and show to the Court that this case, in a general way, involves the lawfulness of the commercial exchanges and boards of trade which are to be found in the various large cities and important trade centers, in view of the provisions of the so-called trust act of July 2, 1890. It is of supreme public importance, and in view of the conclusion expressed by the circuit court that the defending Kansas City Live Stock Exchange is an illegal combination, a speedy determination of the case is imperatively essential, to the end that if such organizations be lawful they may proceed without further interruption in their respective careers of usefulness, and if illegal that the public be relieved of the evil they work at the earliest possible

moment. The appellants venture to suggest that as the construction of the same act of July 2, 1890, is involved in the pending case of United States *vs.* Joint Traffic Association, which has already been set for hearing on January 3, 1898, it would be proper and promotive of the convenience of this Court to assign this cause for hearing immediately after that case. If for any reason this suggestion is not adopted, we ask that the case may be assigned for the earliest possible day thereafter and not later than the cases already set for that day.

L. C. KRAUTHOFF,
Solicitor for Appellants.

The appellee, waiving further notice of the foregoing motions, joins therein and asks that said cause may be advanced as therein prayed and be set for some convenient day.

J. K. RICHARDS,
Solicitor General.

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Supreme Court U.S.
FILED
DEC 13
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

ON CERTIFICATE FROM CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

Motion by Appellants for Order Requiring Entire Record and Whole Cause to be Certified to this Court.

The said appellants come now and show to the Court that an appeal herein having been duly taken to the circuit court of appeals for the eighth circuit, that court, pursuant to the provisions of section 6 of the act of March 3, 1891 (26 Stat. L., 826), has certified certain questions to this Court for determination, which certificate has been duly filed with the clerk of this Court, to which reference is had.

And thereupon the said appellants move the Court to

order the entire record in said cause, as filed in the said circuit court of appeals, to be certified to this Court, as provided in said section 6 of the act of Congress above referred to, in accordance with the course pursued in the (in these respects) similar case of Anderson *vs.* United States, No. 479, in which the order was made October 25, 1897. Appellants present herewith a complete printed copy of said record, and in support of this motion show to the Court that it appears from said record—

First. This is a proceeding under section four of the so-called trust act of July 2, 1890, to dissolve the Kansas City Live Stock Exchange and to enjoin the enforcement of certain of its most important rules (Record, p. 12). That association is a typical American commercial exchange or board of trade, and the charges of unlawfulness against these appellants, if sustained, are equally applicable to every such typical organization in the United States. As these bodies are very large in number—there being one or more of them in every city of commercial importance in the civilized world; as the persons to be branded as violators of the congressional enactment are exceedingly numerous; as the value of the membership in such bodies in the United States aggregates over one hundred million dollars, and as the influence of these bodies, for good or evil, is incalculably great and constantly exerted, it is apparent that the case is one of surpassing importance. It ought, therefore, to be decided only upon the fullest examination of all the facts, and not alone upon a necessarily condensed statement thereof in the form of a certificate.

Second. This case is not one which falls within the final jurisdiction of said circuit court of appeals; consequently, after the questions stated in said certificate have been answered, an appeal can be taken from said court to this Court. As a result, this Court is subject to be called upon to pass on

the case a second time, thus largely increasing its labors, putting the parties to additional expense, and greatly delaying the final disposition of the case, which the interests of the public, as well as of the parties, require to be promptly and authoritatively disposed of at the earliest possible moment. So, too, on such subsequent appeal this Court might find many of the important facts to be different from those recited in said certificate, and consequently reach a result directly at variance with that foreshadowed by its response to said questions.

Third. The case was heard below on bill, answer, and replication, and upon a series of affidavits fully disclosing the theories and views of the respective parties; so that by examining the entire record this Court will be able to make what will be, to all intents and purposes, a final and complete disposition of the controversy.

Fourth. The order appealed from is *mandatory* in form and operates as a *final decree* (Record, pp. 277, 278). The certificate under consideration was framed upon the assumption on the part of the circuit court of appeals that this Court would follow the precedent set in Anderson *vs.* United States, *supra*, which recently came from the same court, and in which this Court promptly granted a motion to certify the complete record. It was also the understanding and agreement of counsel for both parties to this case in said Court, so far as it was competent for them to influence the matter, that the order herein prayed for should be made.

Fifth. The certificate under consideration is limited to a substantial recital of the conclusions expressed upon the facts by the circuit court. As to many of these conclusions, it will be insisted that they are wholly unwarranted by the uncontradicted testimony in the case. Only a portion of the rules of the defending exchange are disclosed. In justice

to the appellants, their rules should be considered in their *entirety* and the lawfulness of their association judged only upon a review of *all* its purposes and regulations. A mere casual perusal of the opinion of the circuit court (Record, p. 267 *et seq.*) will readily disclose other matters which can be fairly and intelligently considered only by having access to all the details and circumstances bearing thereon.

To these ends a certification of the entire record is indispensably essential. This record being already in print, there will be no appreciable delay in the hearing of this interesting and highly important case.

L. C. KRAUTHOFF,
Solicitor for Appellants.

The appellee, waiving further service of the foregoing motion, joins in the foregoing motion and in asking that the order prayed for may be made.

J. K. RICHARDS,
Solicitor General.